

DATE: August 28, 2017 **FILE:** 6470-20

TO: Chair and Directors
Electoral Areas Services Committee

FROM: Russell Dyson
Chief Administrative Officer

RE: Denman Island Bylaw No. 225 Referral (Land Use Bylaw Amendment to Generally Prohibit Vehicles and Ground-Based Machinery in Water Zones)

Purpose

To apprise the board of a bylaw proposed by the Denman Island Local Trust Committee that prohibits vehicles and ground-based machinery in the Island's water zones.

Policy Analysis

The Comox Valley Regional District (CVRD) Official Community Plan (OCP) contains a policy framework to support aquaculture as a key industry and to balance that support with assessment of the impact of the industry on the marine environment and upland land uses/users. The OCP does not apply to lands/water within the jurisdiction of the Islands Trust.

Aquaculture licenses are issued by Fisheries and Oceans Canada (DFO) and tenures are granted by the Ministry of Forests, Lands, and Natural Resource Operations. The tenure does not address access but does grant rights to use the area for intertidal and deepwater aquaculture.

Executive Summary

- The purpose of the bylaw is for Denman Island to regulate use of the beaches and to prohibit access by vehicles and machinery from entering Denman Island water zones except where licensed aquaculture operations are entitled to access the area (Appendix A).
- Staff are advised that Denman Island has had a legal review of the bylaw and it is not deemed to be ultra vires, by way of regulating the practice of industry, versus the location of industry as provided for in zoning.
- Islands Trust has identified one water zone, being W3, where aquaculture can be undertaken and staff are advised that the proposed bylaw is not intended to prohibit existing aquaculture operators from accessing tenures within this W3 zone (Appendix B).
- It would appear that the bylaw is intended to allow for current aquaculture operators to access their tenures but limit growth of the industry, by way of limiting access, in other areas where aquaculture is not intended to be a permitted use through their zoning framework.
- This situation is reflective of the difficulty in managing an industrial activity by way of zoning in an industry with multi-levels of jurisdiction granting licences and tenures, as reviewed in the recent Baynes Sound Initiatives study.

Recommendation from the Chief Administrative Officer:

None. For information only.

Respectfully:

Russell Dyson

Russell Dyson
Chief Administrative Officer

Background/Current Situation

Increased industrial and recreational use of the marine waters of the Trust area has been an ongoing and long standing concern of the Denman Island Local Trust Committee and Islands Trust Council. In 2016, the council identified a range of marine protection tools to consider in implementing its provincial mandate to preserve and protect the Trust area. Zoning is a key tool to regulate land use (including regulation over the surface of the water).

The Denman Island Local Trust Committee has defined four marine water zones. Aquaculture is a permitted use in one of those zones, the W3 zone (Appendix B). Staff are advised that DFO considers local government zoning in its issuance of aquaculture license, though one of the recommendations of the Baynes Sound Initiative was to work more closely with the provincial and federal agencies administering the harmonized application process to be cognizant of local government zoning in the issuance of new tenures.

As background, many aquaculture operators access their inter-tidal tenures by motorized vehicle and/or use vehicles and other ground-based machinery to harvest their product. It would appear that for these operators a restriction on vehicular access within the foreshore could impact their ability to operate; for that reason there is an Information Note in the proposed bylaw to acknowledge that some licenses include a provision to operate vehicles/other ground-based machinery. Staff are assured that the Denman Island Local Trust Committee has obtained a legal review of the bylaw and are of the view that the proposed bylaw will not be used to limit access to existing tenure holders. It may, however, limit expansion of the industry to other areas, but that in fact is the intent of using zoning to manage where industry may be located.

Options

1. Take no action as the matter is fully within the Denman Island Local Trust Committee's jurisdiction.
2. Advise the Islands Trust (Denman Island Local Trust Committee) that the CVRD is concerned the proposed bylaw will negatively impact the growth of aquaculture industry regionally, by limiting growth on Denman Island.
3. Refer the matter back to staff with direction on next steps.

Staff recommends option 1.

Financial Factors

There are no financial factors arising from staff's recommendation.

Legal Factors

Denman Island has had a legal review of the proposed bylaw.

Regional Growth Strategy Implications

While the Regional Growth Strategy (RGS) does not apply to lands and waters within the Islands Trust Area, it does recognize the value of the industry as a regional source of employment. The RGS also includes a target that existing shellfish farms and tenures be protected with no net loss.

Intergovernmental Factors

The Islands Trust issued this referral to a range of First Nations and agencies, including the K’ómoks First Nation.

Interdepartmental Involvement

Planning staff have undertaken the review of the Denman Island Local Trust Committee’s proposed bylaw.

Citizen/Public Relations

Residents of Denman Island have long expressed concern with the aquaculture industry and staff are advised that many residents support this approach.

Concurrence:

A. MacDonald

Ann MacDonald, MCIP, RPP
General Manager of Planning and
Development Services Branch

Attachments: Appendix A – “Denman Island’s proposed Bylaw No. 225”
Appendix B – “Denman Island’s zoning maps”

PROPOSED

DENMAN ISLAND LOCAL TRUST COMMITTEE

BYLAW NO. 225

A bylaw to amend the Land Use Bylaw to prohibit the use of vehicles and ground based machinery on the foreshore in the W1, W3 and W4 zones.

The Denman Island Local Trust Committee, being the Local Trust Committee having jurisdiction in respect of the Denman Island Local Trust Area in the Province of British Columbia pursuant to the *Islands Trust Act*, enacts as follows:

- 1 Denman Island Land Use Bylaw No. 186, cited as "Denman Island Land Use Bylaw, 2008", is amended as detailed on attached Schedule 'A' of this amending bylaw.
- 2 This Bylaw may be cited as "Denman Island Land Use Bylaw No. 186, 2008, Amendment No 1, 2017".

READ A FIRST TIME this 6TH day of JUNE , 2017

PUBLIC HEARING this day of , 201X

READ A SECOND TIME this day of , 201X

READ A THIRD TIME this day of , 201X

APPROVED BY THE EXECUTIVE COMMITTEE OF THE ISLANDS TRUST

this day of , 201X

ADOPTED this day of , 201X

Chairperson

Secretary

**DENMAN ISLAND LOCAL TRUST COMMITTEE
BYLAW NO.225**

Schedule 'A'

1. PART 3 ZONE REGULATIONS, Section 3.7 Water Zoning Tables is amended by the addition of a new “Table 5 – Prohibited Uses” as shown below:

Table 5 – Prohibited Uses

The regulations listed in this table are intended to be applied in conjunction with the provisions of Table1, “Permitted Uses” in order to provide additional guidance and clarity on acceptable implementation actions and practices associated with the permitted uses

Zoning Code	Regulations
W1, W3, W4	Despite Table 1 of this Section, the use of vehicles and ground based machinery on the foreshore is prohibited.

INFORMATION NOTE: Aquaculture operations in the W3 zone that are licensed under the *Fisheries Act (Canada)* may be entitled to operate vehicles or ground based machinery in accordance with the terms of the license.

DENMAN ISLAND LAND USE BYLAW

Bylaw #186 SCHEDULE B - NORTH SHEET

- RESIDENTIAL ZONES**
- R1 Residential
 - R2 Rural Residential
 - R3 Community Housing

- RESOURCE ZONES**
- A Agriculture
 - F Forestry
 - RE Resource

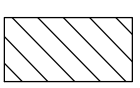
- COMMERCIAL AND LIGHT INDUSTRIAL ZONES**
- C Commercial
 - L Light Industrial

- COMMUNITY ZONES**
- IN Institutional
 - CN Conservation
 - PK Park

- WATER ZONES**
- W1 Marine Conservation
 - W2 Marine Services
 - W3 Aquaculture
 - W4 Marine Protection
 - W5 Lakes

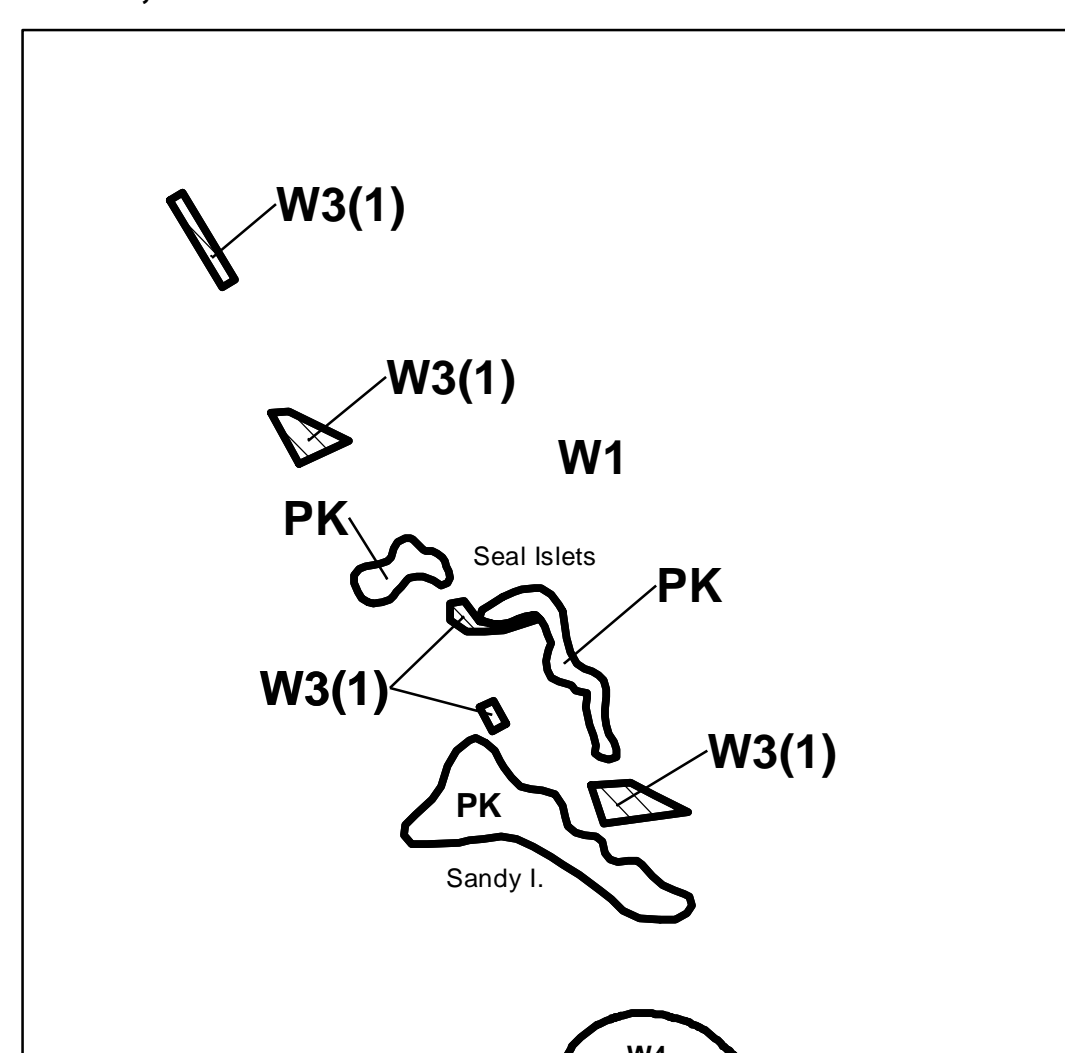
 Agricultural Land Reserve

SITE SPECIFIC

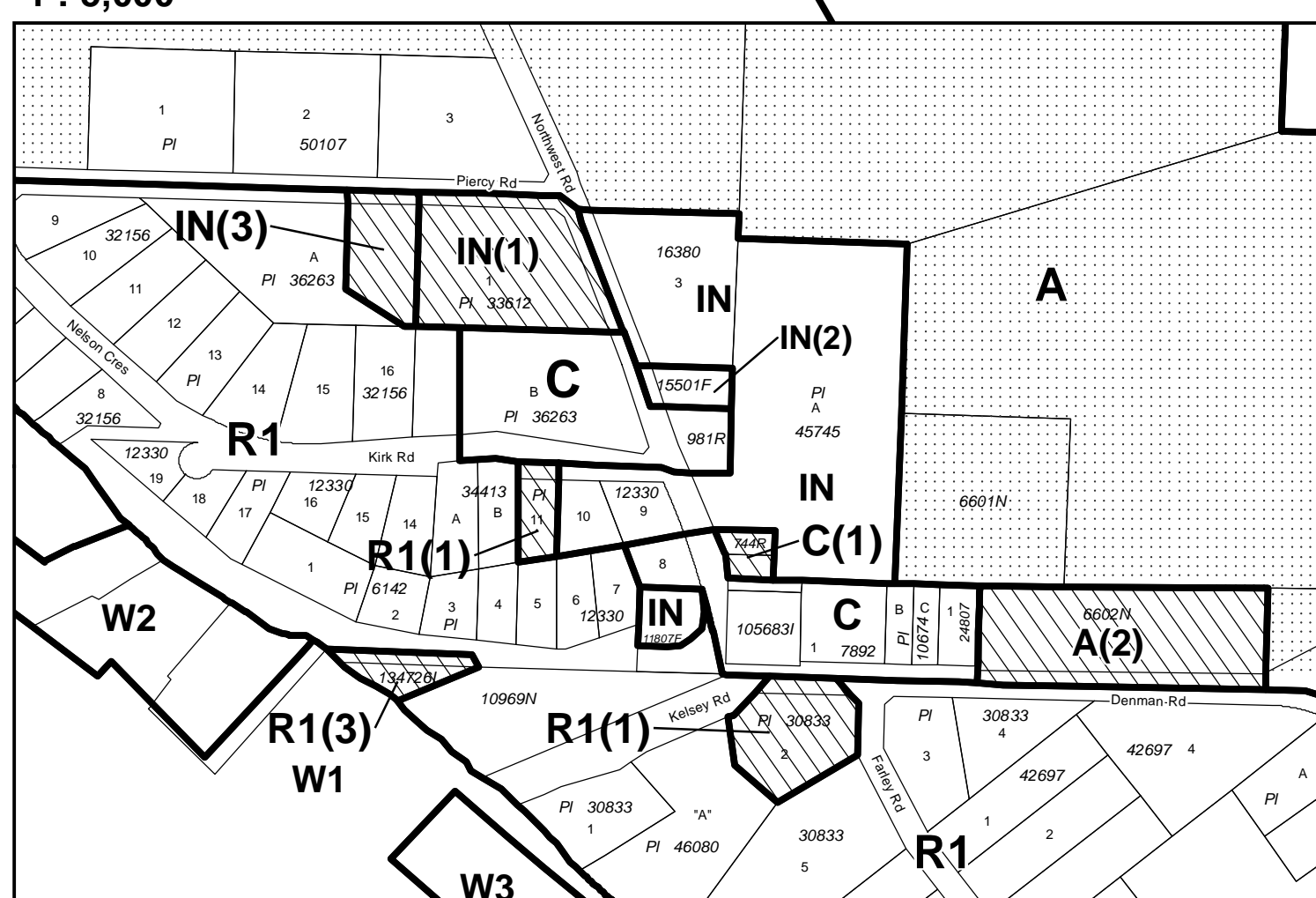
 Site Specific Zoning
These regulations apply where the zoning code is followed by a number in parentheses, for example R1(2)

 Land Use Contract #267

INSET C
1 : 30,000



INSET A - DENMAN VILLAGE
1 : 5,000



BYLAW AMENDMENTS

- Bylaw 190 April 2010
- Bylaw 192 May 2010
- Bylaw 194 Aug 2010
- Bylaw 197 Aug 2010
- Bylaw 200 Aug 2011
- Bylaw 204 Sept 2013

DENMAN ISLAND LAND USE BYLAW

Bylaw 186
SCHEDULE B - SOUTH SHEET

RESIDENTIAL ZONES

- R1 Residential
- R2 Rural Residential
- R3 Community Housing

RESOURCE ZONES

- A Agriculture
- F Forestry
- RE Resource

COMMERCIAL AND LIGHT INDUSTRIAL ZONES

- C Commercial
- L Light Industrial

COMMUNITY ZONES

- IN Institutional
- CN Conservation
- PK Park

WATER ZONES

- W1 Marine Conservation
- W2 Marine Services
- W3 Aquaculture
- W4 Marine Protection
- W5 Lakes

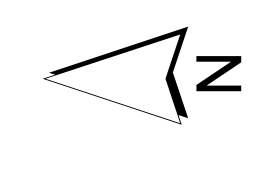
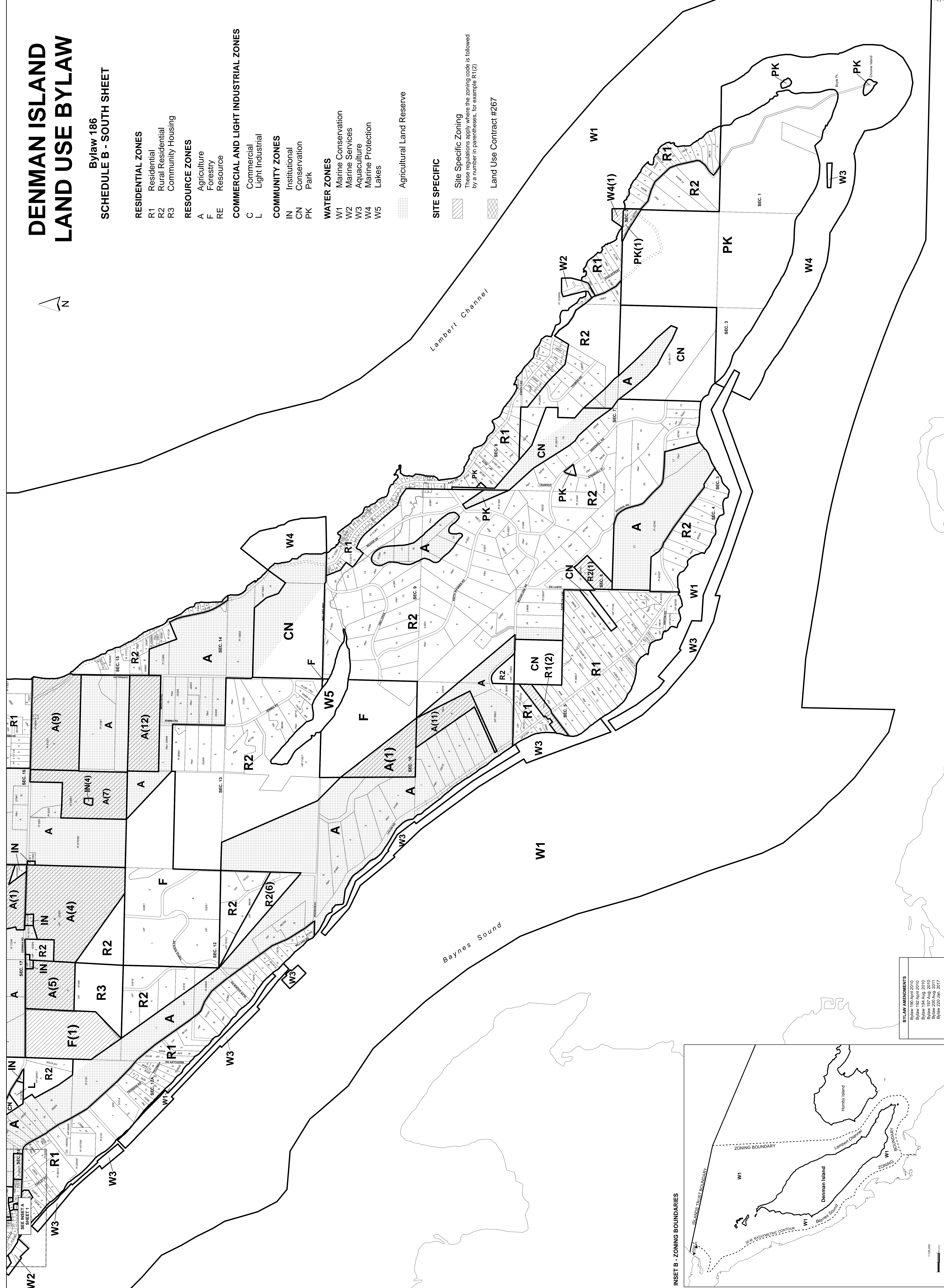
Agricultural Land Reserve

SITE SPECIFIC

Site Specific Zoning

These regulations apply where the zoning code is followed by a number in parentheses, for example R1(2)

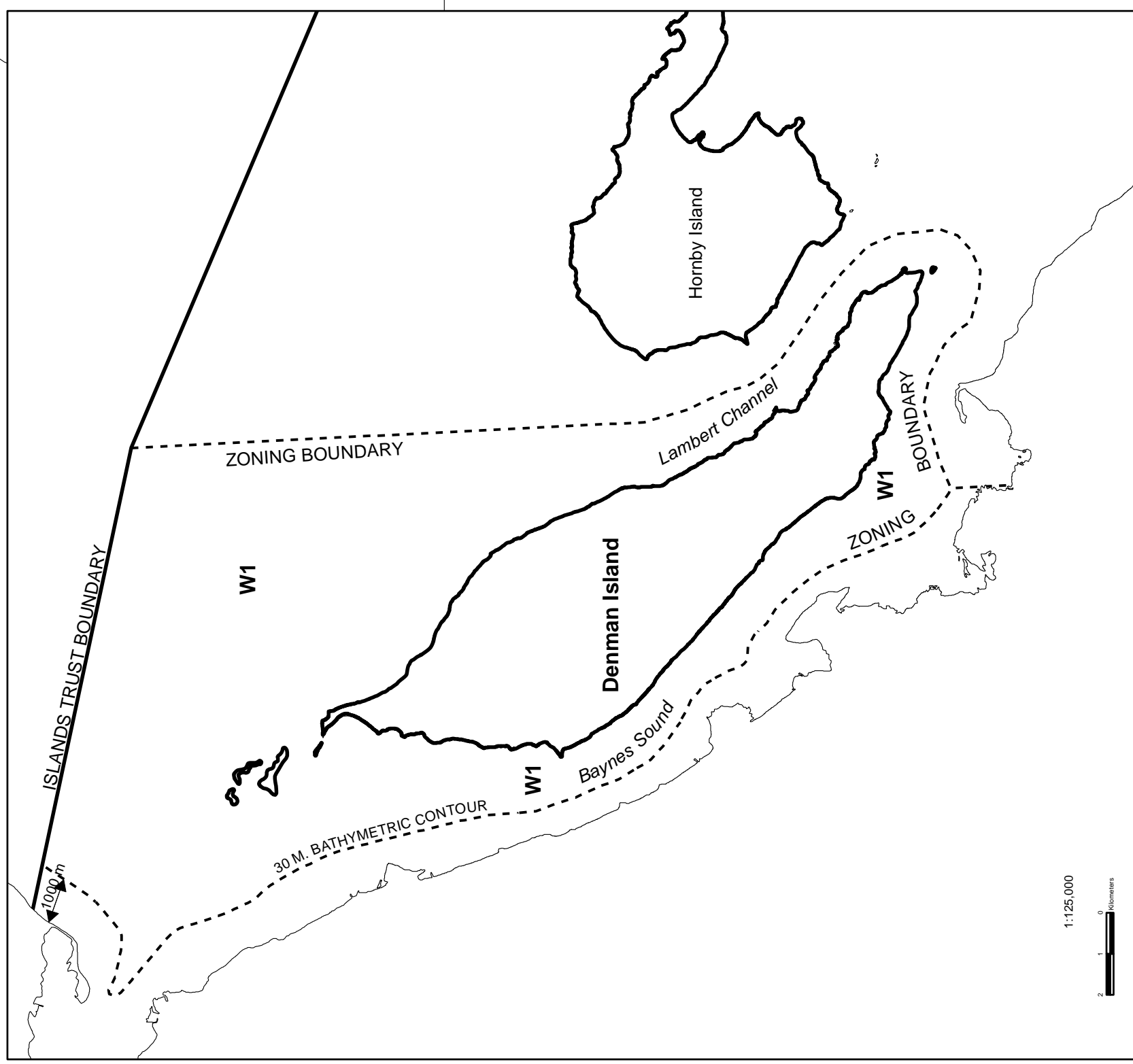
Land Use Contract #267



Lambert Channel

Baynes Sound

INSET B - ZONING BOUNDARIES



BYLAW AMENDMENTS
 Bylaw 182 April 2010
 Bylaw 182 April 2010
 Bylaw 184 Aug. 2010
 Bylaw 185 Aug. 2010
 Bylaw 200 Aug. 2011
 Bylaw 220 Jan. 2017

1:10,000

Scale 1 : 10,000

